

AMENDED IN SENATE APRIL 22, 1998

SENATE BILL

No. 1639

Introduced by Senator O'Connell

February 13, 1998

An act to amend Sections 23220, ~~23221~~, 23222, 23223, 23225, and 23226 of the Vehicle Code, relating to vehicles, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1639, as amended, O'Connell. ~~Off-highway motor~~ Motor vehicles: *lands: alcohol and drugs.*

(1) Existing law prohibits engaging in specific activities involving alcoholic beverages while *driving or while* in a motor vehicle upon a highway. ~~Existing law also regulates the operation of motor vehicles that are not registered under the Vehicle Code because they are used exclusively off the highways (off-highway vehicles subject to identification).~~

This bill would expand these prohibitions to include engaging in those activities while ~~in an off-highway motor vehicle that is subject to identification~~ *on specified lands.*

~~The bill would also prohibit~~

(2) ~~Existing law prohibits the possession of marijuana in an off-highway motor vehicle in a provision under existing law that prohibits the possession of marijuana while driving a motor vehicle upon a highway.~~

This bill would expand this prohibition to include possession of marijuana while driving a motor vehicle on specified lands.

Because this bill would expand the scope of existing crimes, the bill would impose a state-mandated local program.

~~(2)~~

(3) Existing law prohibits the keeping in a motor vehicle that is upon any highway any bottle, can, or other receptacle containing any alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed unless the container is kept in the trunk or, if there is no trunk, kept in some other area of the vehicle that is not normally occupied by the driver or passengers.

This bill would allow, in cases where there is no trunk, the keeping of the above described receptacle in a locked container, which the bill would define.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23220 of the Vehicle Code is
2 amended to read:

3 23220. (a) No person shall drink any alcoholic
4 beverage ~~under the following conditions:~~

5 ~~(a) While~~ while driving a motor vehicle upon any
6 highway ~~or on any lands described in subdivision (b).~~

7 ~~(b) While driving an off-highway motor vehicle that is~~
8 ~~subject to identification, as described in subdivision (a) of~~
9 ~~Section 38010.~~

10 SEC. 2. ~~Section 23221 of the Vehicle Code is amended~~
11 ~~to read:~~

12 ~~23221. No person shall drink any alcoholic beverage~~
13 ~~under the following conditions:~~

14 ~~(a) While in a motor vehicle upon a highway.~~

~~(b) While in an off-highway motor vehicle that is subject to identification, as described in subdivision (a) of Section 38010.~~

~~SEC. 3.—~~

(b) As used in subdivision (a), “lands” means those lands to which the Chappie-Z’berg Off-Highway Motor Vehicle law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

SEC. 2. Section 23222 of the Vehicle Code is amended to read:

23222. (a) No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway or while driving an off-highway motor vehicle that is subject to identification, as described in subdivision (a) of Section 38010, any bottle, vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

(b) Except as authorized by law, every person who possesses, while driving a motor vehicle upon a highway or while driving an off-highway motor vehicle that is subject to identification, as described in subdivision (a) of Section 38010 or on lands, as described in subdivision (b) of Section 23220, not more than one avoirdupois ounce of marijuana, other than concentrated cannabis as defined by Section 11006.5 of the Health and Safety Code, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding any other provision of law, if the person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, Sections 1000.1 and 1000.2 of the Penal Code are applicable to the person,

1 and the court shall divert and refer the person for
2 education, treatment, or rehabilitation, without a court
3 hearing or determination or the concurrence of the
4 district attorney, to an appropriate community program
5 which will accept the person. If the person is so diverted
6 and referred, the person is not subject to the fine specified
7 in this subdivision. In any case in which a person is
8 arrested for a violation of this subdivision and does not
9 demand to be taken before a magistrate, the person shall
10 be released by the arresting officer upon presentation of
11 satisfactory evidence of identity and giving his or her
12 written promise to appear in court, as provided in Section
13 40500, and shall not be subjected to booking.

14 ~~SEC. 4.—~~

15 *SEC. 3.* Section 23223 of the Vehicle Code is amended
16 to read:

17 23223. No person shall have in his or her possession on
18 his or her person, while in a motor vehicle upon a highway
19 ~~or while in an off-highway motor vehicle that is subject to~~
20 ~~identification, as described in subdivision (a) of Section~~
21 ~~38010 or on lands, as described in subdivision (b) of~~
22 *Section 23220*, any bottle, can, or other receptacle,
23 containing any alcoholic beverage which has been
24 opened, or a seal broken, or the contents of which have
25 been partially removed.

26 ~~SEC. 5.—~~

27 *SEC. 4.* Section 23225 of the Vehicle Code is amended
28 to read:

29 23225. (a) It is unlawful for the registered owner of
30 any motor vehicle, or the driver if the registered owner
31 is not then present in the vehicle, to keep in a motor
32 vehicle, when the vehicle is upon any highway or ~~to keep~~
33 ~~in an off-highway motor vehicle that is subject to~~
34 ~~identification, as described in subdivision (a) of Section~~
35 ~~38010, any on lands, as described in subdivision (b) of~~
36 *Section 23220*, any bottle, can, or other receptacle
37 containing any alcoholic beverage which has been
38 opened, or a seal broken, or the contents of which have
39 been partially removed, unless the container is kept in the
40 trunk of the vehicle, or kept in some other area of the

vehicle not normally occupied by the driver or passengers *or in a locked container*, if the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

~~This~~

As used in this subdivision, "locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

(b) This section shall not apply to the living quarters of a housecar or camper.

~~SEC. 6.—~~

SEC. 5. Section 23226 of the Vehicle Code is amended to read:

23226. It is unlawful for any person to keep in the passenger compartment of a motor vehicle, when the vehicle is upon any highway or ~~to keep in any compartment of an off-highway motor vehicle that is subject to identification, as described in subdivision (a) of Section 38010~~ *on lands, as described in subdivision (b) of Section 23220*, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

This section shall not apply to the living quarters of a housecar or camper.

~~SEC. 7.—~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

3 *SEC. 7. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or*
5 *safety within the meaning of Article IV of the*
6 *Constitution and shall go into immediate effect. The facts*
7 *constituting the necessity are:*

8 *In order that the provisions of this act, restricting the*
9 *use of alcohol and drugs with regard to the operation of*
10 *vehicles, may become effective as early as possible, it is*
11 *necessary that this act take effect immediately.*

